

ELDER ABUSE, NEGLECT, AND EXPLOITATION



IT IS A CRIME

MISSOURI'S RESPONSE SYSTEM

1-800-392-0210

TDD 1-800-669-8819

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Department of Health and Senior Services

Division of Senior Services and Regulation

Section for Senior Services

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Aging in Missouri

- ◆ According to the 2000 census, there are 983,704 residents age 60 and over (17.6% of Missouri's total population of 5,595,211).
 - ◆ Of the 983,704 who are age 60 and older, 98,571 or 10% are seniors over the age of 85.
 - ◆ The age 60 and over population is 14th nationally, according to the 2000 census. Missouri ranks 11th nationally, tied with Massachusetts, when calculated proportionally.
 - ◆ In 2005 there are projected to be 1,172,336 Missouri residents age 60 and older, and of those, 121,383 will be age 85 and over.
 - ◆ In 2025, Missouri's population of seniors is projected to be almost 1,625,394 or approximately 20% of Missouri's total population.
 - ◆ The average county in Missouri has 41% of its 65 and over population at or below 200% of the poverty level.
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Aging Across America

- ◆ 14% of the elderly population age 65 and over reside in nursing facilities.
- ◆ 43% of elderly persons age 65 and above will use nursing homes at some point in the remaining years of their lives.
- ◆ 83% of nursing home residents have limitations in 3 or more activities of daily living.
- ◆ Alzheimer's Disease and other dementias affect 1 in every 10 persons age 65 and over.
- ◆ Nearly 50% of persons age 85 and above have Alzheimer's disease or other dementias.

Source: U.S. Bureau of the Census, MO Office of Administration and the Administration on Aging.

History of Missouri Elder Abuse Laws

- 1980 Established authority of the Division of Aging to provide protective services to elderly (age 60+) in the community.
- 1980 Central Registry Unit (CRU) established.
- 1984 Penalty for abuse and neglect in long-term care facilities amended to a felony.
- 1984 Authority granted whereby the Department of Social Services would establish and maintain an Employee Disqualification List (EDL) of people who have been finally determined by the department to have abused, neglected, or misappropriated funds/property of a facility resident.
- 1987 Protective services extended to include adults (age 18 - 59) who are suffering from mental or physical disabilities that substantially limit their ability to protect their own interests or adequately obtain or perform services necessary to meet their essential human needs.
- 1992 The crime of "Elder Abuse" established, including graduated penalties for perpetrators of abuse and neglect.
- 1992 The EDL statute amended to include the home care industry. Prohibitions, protections, and penalties of the EDL statute extended to include Division of Aging clients receiving services in their homes.
- 1994 Extension of the EDL statute and employment prohibition to include agencies licensed by the Department of Health and all Medicaid provider agencies delivering services to clients in their homes.
- 1994 Failure to report abuse or neglect of a long-term care facility resident from an infraction to a misdemeanor.
- 1997 Legislation mandates criminal background checks on all employees of in-home services providers.
- 1999 Department of Health (DOH) to implement an education and awareness program to increase awareness of the problem of elder abuse and neglect with the goal of reducing the incidences of elder abuse and neglect.
- 2000 Legislation enacted creating the crime of "Financial Exploitation" of the elderly and persons with disabilities to strengthen successful prosecution that reflects the vulnerability of this population.
- 2000 Legislation established the Family Care Safety Registry within DOH to coordinate information necessary to prohibit certain individuals from being employed by agencies responsible for the care of the elderly (and children) including those with a criminal history or other disqualifying registers.
- 2001 The Department of Health and Senior Services was established, as well as Alzheimer's training programs for direct care staff. Legislation passed which created the Pharmaceutical Investment Program within the Department of Health and Senior Services to assist elderly persons with prescription drug expenses.
- 2002 Legislation passed that enhanced the "Utilicare Program" to assist seniors and adults with disabilities to meet the high cost of utility bills. Also, legislation was passed that set forth cost containment measures in the Medicaid Program, resulting in a reduction of covered items and services, and stricter eligibility criteria.
- 2003 Legislation was passed to strengthen clinical oversight of client service plans by authorizing semi-annual clinical nurse assessments to all in-home services clients. (Section 660.300(15)-(18)).

Guiding Principles for Home and Community Services Adult Protective Services (APS)

The law contains certain guarantees that protect the rights of eligible adults alleged to be in need of protective services.

The Missouri Department of Health and Senior Services (DHSS), Division of Senior Services and Regulation (DSSR), Section for Senior Services delivers **home and community based Adult Protective Services (APS)** with consideration to the following inherent rights:

- ◆ Self-Determination
- ◆ Protection
- ◆ Confidentiality
- ◆ Participate in Care Planning
- ◆ Receive Assistance
- ◆ Refuse Services
- ◆ Refuse Medical Treatment

Protective services are provided by individuals or agencies for or on behalf of eligible persons who are unable to:

- ◆ manage their own affairs;
- ◆ carry out the activities of daily living; or
- ◆ protect themselves from abuse, neglect, or exploitation which may result in harm or a hazard to themselves or others.

The purpose of Adult Protective Services is to:

- ◆ promote independence;
- ◆ maximize client choice and provide for meaningful client input for preferences;
- ◆ provide quality alternatives to institutional care; and
- ◆ empower the older adult to attain or maintain optimal self-determination.

Guiding Principles for Long-Term Care Facility Residents

Long-term care facilities are required by statute to provide protective oversight for their residents. In addition, each facility must protect and promote a basic set of "resident rights."

A facility resident has the right to:

- ✓ Be free from mental and physical abuse;
- ✓ Be informed of their medical condition;
- ✓ Select their own physician;
- ✓ Participate in planning their care;
- ✓ Refuse treatment;
- ✓ Voice grievances;
- ✓ Be treated with respect and dignity; and
- ✓ Have treatments provided in privacy.

The DHSS Section for Long-Term Care Regulation staff conducts investigations of reported abuse, neglect, and exploitation of individuals residing in long-term care facilities. Complaint investigations are handled in accordance with state statute, and all information obtained during investigations is handled in a confidential manner.

Long-Term Care Ombudsman Program

The Missouri Long-Term Care Ombudsman Program also helps residents by empowering them with knowledge and advocating on their behalf - both individually and as a group - to ensure that their rights are protected. Services of a Volunteer Ombudsman can be accessed by calling the following number:

1 - 800 - 309 – 3282

Central Registry Unit
24 - hour toll-free HOTLINE
1 - 800 - 392 - 0210

The Central Registry Unit (CRU), the statewide central intake unit, has taken calls since 1980. All calls are electronically recorded and kept on file for a minimum of one year.

TYPE OF CALL	1980 – 2004
Home and Community Services: Abuse/Neglect/Exploitation	258,175
Long-Term Care Regulation: Abuse / Neglect / and Regulatory Issues	101,714
Total Abuse/Neglect and Regulatory Reports	359,889
Pre-long Term Care Screening	296,591
Information and Referral	327,963
Facility Self Reports (1999 to present)	8,505
Statements of Concern (1990 to 1999)	6,425
Total Abuse/Neglect/Exploitation Intake, Screenings, and Information & Referral	999,373

Reports include:

Information regarding the eligible adult:

- Name, address and telephone number;
- Date of birth or age; and
- Other relevant identifiers.

Nature of the incident:

- **ABUSE:** the infliction of physical, sexual, emotional or financial injury or harm;
- **NEGLECT:** failure to provide services when such failure presents either an imminent danger to the health, safety, or welfare - OR - substantial probability that death or serious physical harm will result;
- **MISAPPROPRIATION:** of funds or property of in-home services clients or residents of long-term care facilities;
- **FALSIFICATION:** of documentation which verifies service delivery to in-home services clients; or
- **FINANCIAL EXPLOITATION:** a person in a position of trust and confidence knowingly and by deception or intimidation obtains control of property for use by someone other than the owner.
- **NAMES OF ANY AVAILABLE WITNESSES.**

Registering Reports

Upon initial contact, CRU interviews the caller to obtain information sufficient to determine eligibility for involvement:

- ◆ Adult is over the age of 60, **or**
- ◆ Adult is between the ages of 18 and 59, **and** has a mental or physical impairment that substantially limits one or more major life activities; **and** is unable to:
- ◆ Protect their own interests, **or**
- ◆ Adequately perform or obtain services which are necessary to meet their essential human needs.

Statutes protect the confidentiality of the contents of the report and information regarding the reporter. CRU obtains information sufficient to conduct an investigation.

Classification of Reports:

- ◆ **Class I** reports involve life-threatening, imminent danger situations which indicate a high risk of injury or harm to an eligible adult.
- ◆ **Class II** reports involve situations which may result in harm or injury to an eligible adult but is not life threatening.
- ◆ **Class III** reports involve non-protective situations; not Class I/Class II reports.

Imminent Danger - Life-Threatening Situations

The following situations, although not all-inclusive, should be considered emergencies:

- ❑ Reports of physical abuse occurring at the present time or where there are injuries to the eligible adult.
- ❑ Reports of ongoing sexual abuse.
- ❑ Reports involving eligible adults who are suffering from acute, untreated medical conditions.
- ❑ Reports alleging that caretakers of eligible adults are psychotic, behaving in a bizarre manner, or acting under the influence of drugs or alcohol.
- ❑ Reports alleging chemical restraint through non-prescribed drugs or alcohol.
- ❑ Complaints alleging bizarre punishment.
- ❑ Complaints alleging that an eligible adult is suicidal.
- ❑ Complaints involving abandonment of an eligible adult incapable of providing for their essential human needs.
- ❑ Self-referrals from families who state they are unable to meet the immediate care needs of an eligible adult.

Reporting Elder Abuse

Reporting requirements exist in five Missouri statutes: 198.070 RSMo; 198.090 RSMo; 660.300 RSMo; 660.305 RSMo and 565.188 RSMo.

- ◆ Requirements are intended to protect adults who demonstrate a need for protective services or who are suspected to be victims of abuse or neglect.

The subsequent investigation is conducted in accordance with the following statutory guidelines:

1. The identity of a reporter is protected in accordance with state statutes (660.263 RSMo; 660.300 RSMo; 660.320 RSMo and 198.070 RSMo).
2. A reporter is immune from civil or criminal liability for making a report or testifying pursuant to state mandates (660.300.8 RSMo; 198.070 RSMo and 565.190 RSMo).
3. Persons who report (other than the perpetrator) shall be protected from harassment, dismissal or retaliation when such report is filed in good faith (660.300 RSMo; 660.305 RSMo and 198.070 RSMo).
4. The Employee Disqualification List (EDL) is an administrative vehicle through which the Director of DHSS may prohibit persons from working in any capacity in the field of elder care, thereby increasing the protection of eligible adults (660.315 RSMo and 198.070 RSMo).
5. An agency providing services shall be responsible for screening prospective employees, including completion of a criminal background check, and reviewing current employees against the most recent information contained in the EDL (660.315 RSMo; 660.317 RSMo and 198.070 RSMo).
6. DHSS has legislative responsibility for investigation of all allegations of abuse and neglect (660.260 RSMo; 660.261 RSMo; 660.300.5 RSMo; 660.305 RSMo and 565.186 RSMo).
7. The DHSS worker shall investigate reports of alleged abuse and neglect in accordance with current division policy. This investigation will focus on gathering all pertinent information and will generally include:
 - an interview with the reported adult;
 - an interview with any relevant witnesses; and
 - an interview with the alleged perpetrator.

Indicators of Abuse & Neglect

Physical Appearance

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • Burns, especially unusually located • Malnutrition, poor skin color, thin, obese, listless, mind unclear • Bilateral bruises on upper arms, from shaking • Swollen ankles (heart or kidney ailment) • Clustered bruises on trunk from repeated striking • Old and new bruises - as an injury repeated striking • Unhealed sores/untreated injuries • Green, yellow, red, brown sputum • Clothing inappropriate for weather, occasion, filthy, torn, big • Swelling in joints accompanied by sickness or fever • Bone fracture/signs of fractures • Unintentionally non-communicative • Rash, impetigo, eczema • Clothing covering entire body • Thin spots in hair (as though pulled out) | <ul style="list-style-type: none"> • Wheezing/persistent cough • Bruises resembling an object • Untreated medical conditions • Coldness in part of body • Immobile/difficult moving • Same clothing all the time • Sudden weight loss or gain • Lacerations/welts, black eye • Lack of prosthetic devices • Untreated medical condition • Blood in excretion • Loss of sight or hearing • Heat exhaustion • Dehydration • Severe or constant pain • Repeated broken bones • Sudden illness • Odorous, smell of alcohol • Changes in appearance • Dilated pupils • Nails needing clipping | <ul style="list-style-type: none"> • Bed sores • Tremors • Red, painful eyes • Broken glasses/frames • Unkempt, dirty • Hair matted or tangled • Decayed teeth • Swollen eyes • Swelling of legs • Lack of clothing • Shoes on wrong feet • Incontinent • Fleas or lice • Coma • Vomiting • Shortness of breath • Chest pains • Lumps • Scars • Hair not combed • Loss of equilibrium • Narcolepsy |
|---|---|--|

Environmental

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> • Lots of medications lying around • Medications from several doctors • Medications not clearly marked • Soiled bedding/furniture • Food is not present, inadequate or spoiled, or lying around • Food stored improperly • No evidence of food preparation • Unsanitary food preparation • Lack of minimum facilities - bathroom, bed, furniture • Large number of animals lacking care • Lack of electricity, heat, water, toilet, or cooking facilities, refrigeration or cooling • House infested with fleas, lice, roaches, rats, birds, squirrels, snakes, etc. • Change in housekeeping style • Piles of dirty clothes/linens • Number of locks and bolts • Disappearance of personal property or household items | <ul style="list-style-type: none"> • Hazardous conditions: <ul style="list-style-type: none"> - poor wiring - porch is rotten - open fireplace - stack of newspapers - only one exit - inadequate light - no handrail on stairs - odor of gas - loose rugs - floor uneven, slippery - unventilated gas heaters - extension cord in traffic pattern - no grab bars or non-skid strips in bathroom - bad chimney - broken glass - no locks • Large cracks in wall/floor | <ul style="list-style-type: none"> • Outdated prescriptions • Fecal/urine smell • Urine soaked bed • Evidence of restraints • Limited variety of food • Roof leaks • Furniture rickety • Overcrowding • Home too cold/hot • Home not ventilated • No screens or windows • Contaminated well • Empty bottles of liquor • Yard cluttered • Unable to access essential rooms • Burst water pipes • High grass • Bad neighborhood • Frequent moving • Too many stairs |
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Behavior of Family or Caregiver

- Conflicts with others or the community
- Arguments within extended family on care provided to client
- Family imposes obligations
- Manipulates overly passive adults into babysitting, paying bills, loaning money
- Family has other illness to deal with
- Recent loss of spouse, family members or close friends
- Resentment by caregiver
- Financial problems / lack of money
- Client left alone for long periods of time
- Lack of knowledge by caregiver of client's condition and needed care
- History of mental illness in the family
- Withholding of food or medications
- Unrealistic expectations of client
- Explanation of injury not feasible
- Past history of similar episodes
- Inconsistent explanations
- Sudden appearance of previously uncaring relatives
- Evasiveness on payment of bills
- Unusual household composition
- Competition in family for attention
- Blames others for problems
- Irresponsible
- Caregiver has many other responsibilities
- Denial of problems
- Alcohol, drug use by family
- Intergenerational households
- Overprotection by family
- Lack of physical, facial, eye contact with client
- Caregiver does not provide personal care
- Unusual expenses and no visible means of income
- Transfer of property, savings, Insurance, wills
- Other injuries found which were not reported
- Prolonged interval between treatment and injury
- Someone other than caregivers bring clients
- Caregiver will not allow visitors
- Unexplained cash flow
- Excessive payment of care
- Marital or family discord
 - striking
 - shoving
 - beating
 - name-calling
 - scape-goating
 - yelling
- Continuous friction
- Hostility
- Secretive
- Impatient
- Frustrated
- Poor self-control
- Shows little concern
- Recent family crisis
- Role reversal
- Treats client like a child
- Overly frugal
- Lock client away from family
- Family does not interact with client
- Resentment
- Jealousy
- Doctor hopping

Social Indicators

- Client resists going outside home
- Little or no contact with others
- Only one person to call in times of crisis
- Dependent on one caregiver for financial/physical/emotional support
- Conflicts with the community
- Pets replace affection from others
- Undesirable friends, too many
- Caregivers providing help for pay
- Visitors only on check day
- Home is physically isolated from community
- No assistance provided by friends, relatives, or neighbors
- Lives alone or in an overcrowded home
- Community refuses support, client is ostracized
- Lack of magazines, books, radio, TV, phone, letters
- Receives no visitors
- Lack of aged friends
- Doesn't know neighbors
- Relatives live far away
- Doesn't want worker to leave
- No hobbies or interests
- Eats alone
- Unable to read or write

Client's Behavior

- Withdrawn - no desire for family or outside contacts
- Not willing to form attachments
- Extreme agitation, irritable or grouchy
- Depressed affect / no eye contact, movement or expression
- Sleep disorders, insomnia, nightmares
- Excessive physical complaints
- Denial of problem due to pride
- History of mental illness
- Alcohol or drug abuse
- Violent / threatens worker
- Delusions / paranoia
- Recent or sudden changes in behavior or attitudes
- Denial of problems
- Refusal to talk about subject personal matters
- Loneliness
- Unjustified fear
- Unwarranted suspicion
- Mentally deficient
- Bizarre behavior
- Compulsiveness
- Fanaticism
- Frequent falls
- No set meals

Client's Behavior (continued)

- Refuses to discuss situation, cooperate, communicate the need for help
- Blaming of someone else for problems
- Unable to cook, phone for help or take medications properly
- Unaware of how much money they receive and regular monthly expenses
- Carries large amount of cash
- Lacks judgment, confuses priorities
- Frequent requests for help at the end of the month to supplement income
- Payment of exorbitant prices for services, repairs, rent, etc.
- Unable to respond rationally to questions / erratic / irrational
- Disoriented as to time and place
- No incentive or motivation, apathetic
- Persistent, intense anxiety unattributable to any real problem
- Feelings of inadequacy or worthlessness
- Inappropriate use of facilities
- Constantly losing thoughts
- Hoards / squanders money
- High dependence on others, or agencies
- Chronically fails to pay bills
- Depleted bank accounts with nothing to show
- Large amount of purchases on credit
- Can't remember who you are or who they are
- Inability to follow instructions
- Utterly discouraged / hopeless
- No pride in themselves or their home, low self-esteem
- Inability to distinguish between fantasy and reality
- Unreasonable excuses
- Frightened of caregiver
- Unintelligible speech or unable to communicate
- Overly frugal
- Wandering
- Begging
- Pack-ratting
- Confusion
- Easily influenced
- Overly quiet
- Passive
- Timid
- Suicidal
- Excessive crying
- Uncashed checks; money laying around
- Demanding undivided attention
- Careless smoking
- Refuses to open door
- Unwillingness to talk
- Extreme procrastination
- Giving money away; overly-generous

Investigation

Initiation of the investigation will begin as soon as is necessary, according to information contained in the report.

- ◆ The DSSR Social Services Worker reviews the report and contacts the reporter when appropriate (and in as much as is possible) for additional information.
- ◆ Interviews are conducted with the reported adult and the alleged perpetrator, and any other relevant witnesses.
- ◆ The DSSR Social Services Worker shall notify the appropriate law enforcement authorities when the report may involve a crime.
- ◆ Protective services are implemented only with consent of the reported adult (or guardian when appropriate).
- ◆ DSSR may institute legal proceedings as part of the protective service plan when judicial intervention is determined necessary to protect the eligible adult from abuse or neglect.
- ◆ Service plans are coordinated with current support systems to maximize client independence.

Overview of Service Intervention

Core Services

- Intake and assessment
- Case management
- Follow-up
- Early intervention services
- Temporary financial support

Financial and Economic

- System for money management: counseling, power of attorney, payee, conservatorship
- Income stretching benefits: SSI, SS, VA, Food Stamps, Medicaid, private pension plans, Railroad Retirement, health insurance
- Employment programs / agencies
- Clubs and churches which provide specific services: Lions, Rotary, civic groups, fraternal organizations

Legal

- Better Business Bureau
- Law enforcement
- Attorneys; state and local bar associations; Legal Aid
- Civil commitment
- Orders of protection
- Durable power of attorney
- Guardianship / conservatorship / public administrator
- Probate and circuit courts

Health / Medical

- Hospitalization, doctor visit, outpatient clinics
- Health screening and medical evaluation
- Drug information and health education
- Mental health services
- Dental care
- Home health care, visiting nurses, public health department
- Adult day care
- Medicaid
- Medicare
- Congregate and home-delivered meals
- Boarding / nursing homes
- Voluntary organizations (American Cancer Society, American Heart Association, etc.)

Emergency

- Emergency shelter, food or clothing
- Emergency caregiver or placement
- Crisis intervention

Social, Educational, Recreational

- Outreach
- Information and referral assistance
- Crime prevention
- Telephone reassurance
- Friendly visitor
- Support groups
- Transportation
- Religious / church organization
- Congregate meals / Senior Centers
- Counseling
- Adult educational classes
- Arts and crafts courses
- Civic groups, clubs, fraternal organizations, AARP
- Voluntary organizations (Red Cross, Cancer Society, YWCA, hospital volunteer, nursing home volunteer, foster grandparents)
- Adult day care

Home Support and Housing

- Respite
- Alternative housing, HUB programs, local housing authorities, public housing, retirement villages
- Home repair
- Residential care / nursing homes

Hotline Information - Central Registry Unit

I. Intake Activities (initial reports)

	FY '02	FY '03	FY'04
• Abuse, Neglect and Exploitation (A/N/E) of the elderly	11,834	11,261	11,471
• A/N/E of adults with disabilities under age 60	3,497	3,511	3,719
Subtotal	15,331	14,772	15,190
• Abuse, Neglect Complaints & Facility Self Reports in LTC facilities	*709	920	681
• Other LTC Facility Complaints (without Abuse/Neglect)	*5,487	*5,049	4,246
• Other Facility Self Reports (without Abuse/Neglect)	*1,878	*1,708	1,368
Subtotal	*8,074	*7,677	6,295
• Pre-admission screening referrals (MO Care Options)	20,435	*20,386	20,511
• Other Information and Referral (I & R)	20,972	17,820	17,178
Subtotal	41,407	38,206	37,689
TOTAL INTAKE AND I&R	*64,812	*60,655	59,174

NOTE: The numbers with asterisks above do not match the information previously listed in this report for FY '02 and FY '03. The numbers have been changed to clearly indicate the A/N reports versus all "other" types of reports. In prior reports, the A/N numbers were listed in both the A/N and "Other" line items. This caused the subtotal number to reflect more reports than were actually received. The information matches the information previously reported on page 18 entitled, "Section for Long-Term Care Regulation Abuse Information".

II. Findings (completed investigations from field staff)

A. Home And Community Services: A/N/E of adults residing in home or community based settings.

	Reason to Believe	Suspected	Unsubstantiated
FY '04	55.6%	15.2%	29.2%
FY '03	55.9%	17.4%	26.7%
FY '02	55.7%	19.4%	24.9%

B. Section for Long-Term Care Regulation: Long-term care resident A/N and other complaint including facility self-reports.

	Valid	Unable to Verify	Invalid/Other
FY '04	16.7%	51.8%	31.5%
FY '03	21.3%	29.7%	49.0%
FY '02	17.4%	19.5%	63.1%

III. Types of Information and Referral (I&R) Calls:

- Referrals to other agencies (Medicaid, Social Security, spousal abuse agencies, etc.)
- Referrals to Area Agency on Aging offices
- Refer to local Division of Senior Services and Regulation (DSSR) offices
- Requests for information or publications
- Shared Care Tax Credit Registrations
- Alzheimer's information and support group referral
- Heat crisis, cooling center information
- Pre-admission screening referrals
- Unable to investigate (hang ups, harassment, etc.)

Section for Senior Services (SSrS) Abuse Information Regarding Community Based Investigations

I. Description of Home and Community Services Investigative Findings

- A. Reason to Believe: Substantial amount of evidence is found supporting the allegations contained in the report.
- B. Suspected: Based on worker judgment, allegations contained in the report are probable or likely.
- C. Unsubstantiated: The evidence of the investigation does not support the allegations in the report.

II. Status of Home and Community Services Investigative Findings

	FY '02	FY '03	FY '04
• Reason to Believe	55.7%	55.9%	55.6%
• Suspected	19.4%	17.4%	15.2%
• Unsubstantiated	24.9%	26.7%	29.2%

III. Types of Problems Identified by Status

Based on "problems" on completed investigations (not directly related to the number of reported elders/victims, as victims may have multiple problems).

Total Percentages	FY '02	FY '03	FY '04
Physical Abuse	7.4%	8.4%	9.2%
Physical Neglect	52.2%	50.4%	50.8%
Emotional Abuse	8.9%	9.5%	9.9%
Emotional Neglect	13.2%	12.8%	13.1%
Financial Exploitation	7.5%	10.0%	7.8%
Financial Neglect	6.1%	5.3%	4.6%
Mental Disability	2.4%	2.6%	3.2%
Other	2.3%	1.0%	1.4%

Findings (Types of Problems)	Reason to Believe			Suspected			Unsubstantiated		
	FY '02	FY '03	FY '04	FY '02	FY '03	FY '04	FY '02	FY '03	FY '04
Physical Abuse	34.6%	35.6%	37.4%	17.9%	16.7%	14.2%	47.5%	47.7%	48.4%
Physical Neglect	37.6%	39.8%	40.6%	16.9%	14.8%	13.7%	45.5%	45.4%	45.7%
Emotional Abuse	35.1%	35.7%	36.2%	22.7%	20.6%	18.4%	42.2%	43.7%	45.4%
Emotional Neglect	45.0%	47.9%	48.1%	23.7%	20.6%	19.0%	31.3%	31.5%	32.9%
Financial Exploitation	18.7%	21.9%	19.3%	19.1%	17.5%	18.6%	62.2%	60.6%	62.1%
Financial Neglect	38.9%	43.5%	36.1%	18.2%	14.8%	14.6%	42.9%	41.7%	49.3%
Mental Disability	59.3%	62.6%	53.2%	20.1%	16.3%	15.0%	20.6%	21.1%	31.8%
Other	31.8%	29.7%	31.2%	15.8%	13.9%	14.9%	52.4%	56.4%	53.9%

IV. Demographic Profiles of Home and Community Services Investigations of Reported Elders

		FY '02	FY '03	FY '04	2000 Census (60+) MO population is 5,595,211 59.0%
Sex	Female	65.0 %	64.0 %	64.5 %	
	Male	35.0	36.0	35.5	41.0%
Race	White	79.2 %	79.2 %	81.0 %	91.7%
	Black	17.2	17.2	15.5	7.3%
	Other	0.3	0.3	0.3	1.0%
	Unknown	3.3	3.3	3.2	0.0%
Age	Under 60	22.6 %	23.4 %	24.1 %	82.4%
	60-64	7.1	7.4	7.5	4.0%
	65-69	9.3	9.1	9.5	3.6%
	70-74	12.7	12.4	12.1	3.4%
	75-79	14.6	15.5	14.2	2.5%
	80-84	15.3	14.7	15.1	2.1%
	85-89	11.0	10.2	10.2	2.0% (Over 85)
	90-94	5.4	5.3	5.4	
	95 plus	2.0	2.0	1.9	
Living Arrangement	Alone	46.2 %	43.2 %	41.3 %	39.0%
	With Spouse	14.7	16.3	16.6	20.0%
	With Relative	25.7	25.9	28.7	33.0%
	With Non-relative	4.9	5.3	5.7	4.5%
	Long-term Care	6.4	7.0	6.8	1.6%
	Other / Unknown	2.1	2.3	0.9	1.9%

V. Perpetrator Related Data (when perpetrator designated; reports may have multiple perpetrators)

	FY '02	FY '03	FY '04
Self	21.0 %	17.7 %	18.2 %
Spouse	3.4	4.2	4.0
Housemate	1.5	1.6	1.6
Son/Daughter	11.6	12.2	13.1

<i>(Perpetrator Data Continued)</i>	FY '02	FY '03	FY '04
Siblings	1.5%	1.5%	1.3%
Parent	1.6	1.7	2.2
Grandchild	2.5	2.3	2.6
Other Relative	3.2	3.4	3.7
Friend/Neighbor	2.7	3.0	3.2
Landlord	0.7	0.6	0.5
Guardian	0.5	0.3	0.4
Health Care Professional	1.3	0.7	1.2
In-Home Service Provider	5.0	5.8	5.4
Circumstances / Environment	39.0	39.7	36.8
Other	3.1	3.4	4.5
Unknown	1.4	1.9	1.3

VI. Relationship of Alleged Perpetrator When Living with Reported Elder

	FY '02	FY '03	FY '04
Spouse	18.4%	20.3%	17.6%
Housemate	8.2	6.6	6.7
Son / Daughter	37.3	38.0	34.9
Siblings	3.4	4.0	3.4
Grandchild	8.4	7.0	6.7
Other Relative	15.1	15.5	15.0
Friend / Neighbor	2.6	2.6	2.9
Other	2.8	2.8	12.1
Unknown	3.8	3.2	0.7

VII. Resolution of Investigations Reported by Social Services Workers

	FY '02	FY '03	FY '04
Opened for protective services (PS)	25.7%	25.6%	19.5%
Report substantiated but no (PS)	18.2	17.3	19.8
Resolved (includes unsubstantiated)	28.0	30.7	32.2
Refused services	7.1	7.2	6.7
Placed in long-term facility (care)	8.0	8.0	9.9
Referred to other agency / agencies	3.7	2.3	3.4
Other	1.0	0.9	0.9
Unable to locate	2.0	1.2	1.1
Client died	4.2	4.7	4.5
Client moved	2.1	2.1	2.0

VIII. Abuse, Neglect, Exploitation of Home and Community Services Reports

- Class I:** Imminent danger or an emergency situation.
- Class II:** Direct or immediate relationship to the health, safety or welfare of the reported adult but one which does not create imminent danger.
- Class III:** "Non-protective" situation, not a Class I or Class II.

IX. Total Home and Community Services Hotline Calls

	FY '02		FY '03		FY '04	
<i>Class I</i>	2,177	14.2%	1,918	13.0%	1,656	10.9%
<i>Class II</i>	10,799	70.4%	11,034	74.7%	11,515	75.8%
<i>Class III</i>	2,355	15.4%	1,820	12.3%	2,019	13.3%
TOTAL	15,331	100%	14,772	100%	15,190	100%

X. Field Operations Action

A. Unduplicated Count of Reported Adults Served*	FY '02	FY '03	FY '04
Class I	1,655	1,377	1,145
Class II	8,559	8,530	8,883
Total	10,214	9,907	10,028

* Includes only clients with Departmental Client Numbers (DCN). Based on completed investigations.

B. Time-frames for Seeing Alleged Victim Based on Completed Investigations

FY '04	Total	24 Hours		48 Hours		In 7 days		Over 7 Days/Not seen	
Class I	1,701	1,479	86.9%	29	1.7%	78	4.6%	115	6.8%
Class II	11,825	3,341	28.3%	1,010	8.5%	5,756	48.7%	1,718	14.5%
FY '03	Total	24 Hours		48 Hours		In 7 days		Over 7 Days/Not seen	
Class I	2,025	1,779	87.9%	35	1.7%	95	4.7%	116	5.7%
Class II	11,086	3,235	29.2%	1,179	10.7%	5,227	47.1%	1,445	13.0%
FY '02	Total	24 Hours		48 Hours		In 7 days		Over 7 Days/Not seen	
Class I	2,268	2,020	89.07%	42	1.85%	101	4.45%	105	4.63%
Class II	10,708	3,207	29.95%	1,185	11.07%	4,941	46.14%	1,375	12.84%

Elder Abuse Hotline

1 - 800 - 392 – 0210

Section for Long-Term Care Regulation Abuse Information Regarding Facility Based Investigations

- A. Valid:** A conclusion that the allegation did occur and there was a statutory or regulatory violation.
- B. Invalid:** A conclusion that the allegation did not occur; a conclusion that there is not a reasonable likelihood that the allegation occurred; OR a conclusion that the allegation either occurred or there is a reasonable likelihood that it occurred, but there is not a statutory or regulatory violation.
- C. Could Not Verify:** This conclusion is reached when a complaint is investigated and there is conflicting information collected to the extent that no conclusion regarding a regulatory violation could be reached.

I. Findings Based on Completed Reports

	FY'02		FY'03		FY'04	
Valid - uncorrected	847	10.9%	850	10.8%	642	10.3%
Valid - corrected before investigation, no statement of deficiency	602	7.8%	826	10.5%	399	6.4%
Valid - corrected during investigation, uncertified; no statement of deficiency	0	0.0%	0	0.0%	0	0.0%
Valid - corrected during investigation, certified; statement of deficiency required	0	0.0%	0	0.0%	0	0.0%
Total Valid Investigations	1,449	18.7%	1,676	21.3%	1,041	16.7%
Invalid, unsubstantiated, or not in violation	3,959	51.0%	2,803	35.5%	1,369	22.0%
Could not verify	1,024	13.2%	2,347	29.7%	3,221	51.8%
Other	1,324	17.1%	1,075	13.5%	591	9.5%
Total Investigations Completed	7,756	100%	7,901	100%	6,222	100%

Includes reports without an allegation of a regulatory violation, do not allege abuse or neglect of residents or had already been addressed in a prior survey or complaint investigation.

II. Complaint Reports and Facility Self-Reported (FSR) Incidents Received

	FY '02		FY '03		FY '04	
Abuse, Neglect Complaints	348	6.0%	494	9.0%	375	8.1%
Other Regulatory Allegations	5,487	94.0%	5,049	91.0%	4,246	91.9%
Total Reports	5,835	100%	5,543	100%	4,621	100%

	FY '02		FY '03		FY '04	
Abuse Neglect (FSR)	361	16.1%	426	20.0%	306	18.3%
Other Regulatory (FSR)	1,878	83.9%	1,708	80.0%	1,368	81.7%
Total	2,239	100%	2,134	100%	1,674	100%

*Facility Self Reports (FSRs) were statutorily mandated in FY '01 and FY '02. FSRs in FY '02 include facility self reported allegations of abuse and neglect.

III. Total Complaints and Facility Self Reports

	FY '02		FY '03		FY '04	
Complaint Reports	5,835	72.3%	5,543	72.2%	4,621	73.4%
Facility Self Reports	2,239	27.7%	2,134	27.8%	1,674	26.6%
Total	8,074	100%	7,677	100%	6,295	100%

	FY '02		FY '03		FY '04	
Abuse and Neglect	709	8.8%	920	12.0%	681	10.8%
Other Regulatory	7,365	91.2%	6,757	88.0%	5,614	89.2%
	8,074	100%	7,677	100%	6,295	100%

IV. Breakdown of Valid, Invalid and Unable to Verify Abuse/Neglect Reports

	FY '02		FY '03		FY '04	
Valid With or Without Statement of Deficiencies	165	23.3%	186	20.2%	109	16.0%
Invalid	235	33.2%	195	21.2%	135	19.8%
Unable to Verify	300	43.3%	444	48.3%	423	62.1%
Final Determination Unavailable at This Time	9	0.2%	95	10.3%	14	2.1%
Total	709	100%	920	100%	681	100%

LIST OF MANDATED REPORTERS UNDER SECTIONS 660.00, 565.188 AND 198.070, RSMo

Section 660.300: reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services

Section 565.188: reasonable cause to suspect such a person (age 60 or older) has been subjected to conditions or circumstances which would reasonably result in abuse or neglect

Section 198.070: reasonable cause to believe that a resident of a facility has been abused or neglected

Failure to report is a class A misdemeanor under each of the above statutes.

- | | |
|--|---|
| ✓ Adult Day Care Worker | ✓ Long-Term Care Facility Administrator or employee |
| ✓ Chiropractor | |
| ✓ Christian Science Practitioner | ✓ Medical Examiner |
| ✓ Coroner | ✓ Medical Resident or Intern |
| ✓ Dentist | ✓ Mental Health Professional |
| ✓ Employee of the Department of Social Services | ✓ Minister |
| | ✓ Nurse |
| ✓ Employee of the Department of Mental Health | ✓ Nurse Practitioner |
| | ✓ Optometrist |
| ✓ Employee of a local Area Agency on Aging or an organized Area | ✓ Other Health Practitioner |
| | ✓ Peace Officer |
| ✓ Agency on Aging Program | ✓ Pharmacist |
| ✓ Funeral Director | ✓ Physical Therapist |
| ✓ Home Health Agency or Home Health Agency Employee | ✓ Physician |
| | ✓ Physician's Assistant |
| ✓ Hospital or Clinic Personnel engaged in examination, care, or treatment of persons | ✓ Podiatrist |
| | ✓ Probation or Parole Officer |
| ✓ In-Home Services owner, provider, operator, or employee | ✓ Psychologist |
| | ✓ Social Worker |
| ✓ Law Enforcement Officer | |

Family Care Safety Registry

The Family Care Safety Registry (FCSR) is maintained by the Department of Health and Senior Services in coordination with the Department of Social Services, Department of Mental Health and the Department of Public Safety. Child care and elder care workers hired on or after January 1, 2001, and personal care workers hired on or after January 1, 2002, must be registered. FCSR will help ensure that personnel who provide care for children, the elderly or the physically and mentally disabled can be easily screened for information provided by:

- ◆ Missouri State Highway Patrol for criminal background checks and Sex Offender Registry;
- ◆ Division of Family Support for child abuse/neglect records and foster parent, residential facility and child placing agency licensing records;
- ◆ DHSS for child care facility licensing records;
- ◆ Division of Senior Services and Regulation for Employee Disqualification List records and residential living facility and nursing home licensing records; and
- ◆ Department of Mental Health Employee Disqualification Registry.

Care workers required to register include individuals employed by elder care providers and/or those who receive state or federal funds as payment for elder care services. Elder care providers include home health agencies, hospices, hospitals, nursing facilities, residential care facilities, in-home services agencies and adult day health care agencies. Persons who are not required to register may do so voluntarily. Employers may submit completed registration forms for multiple prospective employees. Registration fees may be paid by the individual or by the employer, and both the applicant and the employer will receive notification of the screening results. Workers need to register only one time, regardless if they change jobs.

Background information from the FCSR may be requested for **employment purposes only**.

- ◆ The caller must provide the registrant's name and social security number before information will be provided. There is no cost to obtain a background screening on registered workers.
- ◆ Information released to callers will be limited to whether the registrant's name is listed in any of the registries and if so, which one(s). Agencies licensed by the state may obtain specific information about the finding by phone, fax, or mail. All other requests must be made in writing and include the registrant's name, address, and the reason for the request.
- ◆ Registrants will be notified each time someone requests information about them from the registry. The notification will contain the name and address of the person making the inquiry and the background information released.
- ◆ Any child care, elder care or personal care worker required to register who fails to submit a completed registration form to the FCSR within 15 days of beginning employment is guilty of a Class B misdemeanor. Any person who uses the information obtained from the FCSR for any purpose other than those outlined in the legislation is guilty of a Class B misdemeanor.

Family Care Safety Registry

1-866-422-6872

7:00 a.m. to 6:00 p.m.

Monday – Friday

CHAPTER 660, RSMo

PROTECTIVE SERVICES FOR ADULTS

660.053. Definitions. As used in section 199.025, RSMo, and sections 660.050 to 660.057 and 660.400 to 660.420, the following terms mean:

(5) **"Elderly"** or **"elderly persons"**, persons who are sixty years of age or older;

(6) **"[Handicap] or [handicapped] Disability"**, a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings;

(8) **"Major life activities"**, functions such as caring for one's self performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(9) **"Protective services"**, a service provided by the Missouri division of aging in response to the need for protection from harm or neglect to eligible adults under sections 660.250 to 660.295.

(L. 1984 H.B. 1131 S1, A.L. 1987 S.B. 27)

660.250. Definitions. As used in sections 660.250 to 660.321, the following terms mean:

(1) **"Abuse"**, the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;

(2) **"Court"**, the circuit court;

(3) **"Department"** the department of health and senior services;

(4) **"Director"**, director of the department of health and senior services or his or her designee;

(5) **"Eligible adult"**, a person sixty years of age or older who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential human needs or an adult with a disability, as defined in section 660.053, between the ages of eighteen and fifty-nine who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential human needs;

(6) **"Home health agency"**, the same meaning as such term is defined in section 197.400, RSMo;

(7) **"Home health agency employee"**, a person employed by a home health agency;

(8) **"Home health patient"**, an eligible adult who is receiving services through any home health agency;

(9) **"In-home services client"**, an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

(10) **"In-home services employee"**, a person employed by an in-home services provider agency;

(11) **"In-home services provider agency"**, a business entity under contract with the department or with a Medicaid participation agreement which employs persons to deliver any kind of services provided for eligible adults in their private homes;

(12) **"Least restrictive environment"**, a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

(13) **"Likelihood of serious physical harm"**, one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of his or her failure or inability to provide for his or her essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself or herself as evidenced by recent credible threats, acts, or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his or her financial resources by another person;

(14) **"Neglect"**, the failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

(15) **"Protective services"**, services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his or her essential human needs.

(L. 1980 S.B. 576 1. A.L. 1987 S.B. 277, 1992 A.L. 2003 S.B. 556 & 311)

660.255 Reports, contents - department to maintain telephone for reporting.

1. Any person having reasonable cause to suspect that an eligible adult presents a likelihood of suffering serious

physical harm and is in need of protective services shall report such information to the department.

2. The report shall be made orally or in writing. It shall include, if known:

- (1) The name, age and address of the eligible adult;
- (2) The name and address of any person responsible for the eligible adult's care;
- (3) The nature and extent of the eligible adult's condition; and
- (4) Other relevant information.

3. Reports regarding persons determined not to be eligible adults as defined in section 660.250 shall be referred to the appropriate state or local authorities.

4. The department shall maintain a statewide toll free phone number for receipt of reports.

(L. 1980 S.B. 576 §2. A.L. 1987 S.B. 277)

Investigations

660.260 Investigations of reports of eligible adults, department procedures. Upon receipt of a report, the department shall make a prompt and thorough investigation to determine whether or not an eligible adult is facing a likelihood of serious physical harm and is in need of protective services. The department shall provide for any of the following:

- (1) Identification of the eligible adult and determination that the eligible adult is eligible for services;
- (2) Evaluation and diagnosis of needs of eligible adults;
- (3) Provision of social casework, counseling or referral to the appropriate local or state authority;
- (4) Assistance in locating and receiving alternative living arrangements as necessary;
- (5) Assistance in locating and receiving necessary protective services; or
- (6) The coordination and cooperation with other state agencies and public and private agencies in exchange of information and the avoidance of duplication of services.

(L. 1980 S.B. 576 §3. A.L. 1987 S.B. 277)

660.261. Investigations of reports of eligible adults between eighteen and fifty-nine, department procedures. Upon receipt of a report that an eligible adult between the ages of eighteen and fifty-nine is facing a likelihood of serious physical harm, the department shall:

- (1) Investigate or refer the report to appropriate law enforcement or state agencies; and
- (2) Provide services or refer to local community or state agencies.

(L. 1987 S.B. 277 A.L. 2003 S.B. 556 & 311)

Confidentiality

660.263. Records, what confidential, what subject to disclosure—procedure—central registry to receive complaints of abuse and neglect.

1. Reports made pursuant to sections 660.250 to 660.295 shall be confidential and shall not be deemed a public record and shall not be subject to provisions of section 109.180 RSMo, or chapter 610 RSMo.

2. Such reports shall be accessible for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department;
- (2) The attorney general;
- (3) The department of mental health for persons referred to that department;
- (4) Any appropriate law enforcement agency; and
- (5) The eligible adult or his legal guardian;

3. The name of the reporter shall not be disclosed unless:

- (1) Such reporter specifically authorizes disclosure of his name; and
- (2) The department determines that disclosure of the name of the reporter is necessary in order to prevent further harm to an eligible adult.

4. Any person who violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the central registry and in reports and records made pursuant to sections 660.250 to 660.295 shall be guilty of a class A misdemeanor.

Central Registry Unit

5. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

6. Although reports to the central registry may be made anonymously, the department shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect attempt to obtain the name and address of any person making a report.

(L. 1987 S.B. 277)

660.265. Assistance to be given. When an eligible adult gives consent to receive protective services, the department shall assist the adult in locating and arranging for necessary services in the least restrictive environment reasonably available.

(L. 1980 S.B. 576 §4)

Administrative Entry Warrant

660.270. Procedure when physical harm may be involved--remedies. When the department receives a report that there has been abuse or neglect, or that there otherwise is a likelihood of serious physical harm to an eligible adult and that he or she is in need of protective services and the department is unable to conduct an investigation because access to the eligible adult is barred by any person, the director may petition the appropriate court for a warrant or other order to enter upon the described premises and investigate the report or to produce the information. The application for the warrant or order shall identify the eligible adult and the facts and circumstances which require the issuance of the warrant or order. The director may also seek an order to enjoin the person from barring access to an eligible adult or from interfering with the investigation. If the court finds that, based on the report and relevant circumstances and facts, probable cause exists showing that the eligible adult faces abuse or neglect, or otherwise faces a likelihood of serious physical harm and is in need of protective services and the director has been prevented by another person from investigating the report, the court may issue the warrant or enjoin the interference with the investigation or both.

(L. 1980 S.B. 576 §5 A.L. 2003 S.B. 556 & 311)

660.275. Interference with delivery of services, effect - remedy. If an eligible adult gives consent to receive protective services and any other person interferes with or prevents the delivery of such services, the director may petition the appropriate court for an order to enjoin the interference with the delivery of the services. The petition shall allege the consent of the eligible adult and shall allege specific facts sufficient to show that the eligible adult faces a likelihood of serious harm and is in need of the protective services and that delivery is barred by the person named in the petition. If the court finds upon a preponderance of evidence that the allegations in the petition are true, the court may issue an order enjoining the interference with the delivery of the protective services and may establish such conditions and restrictions on the delivery as the court deems necessary and proper under the circumstances.

(L. 1980 S.B. 576 §6)

Inability to Give Consent

660.280 Recipient unable to give consent – procedure - remedy. When an eligible adult facing the likelihood of serious physical harm and in need of protective services is unable to give consent because incapacity or legal disability and the guardian of the eligible adult refuses to provide the necessary services or allow the provision of such services, the director shall inform the court having supervisory jurisdiction over the guardian of the facts showing that the eligible adult faces the likelihood of serious physical harm and is in need of protective services and that the guardian refused to provide the necessary services or allow the provision of such services under the provisions of sections 660.250 to 660.295. Upon receipt of such information, the court may take such action as it deems necessary and proper to insure that the eligible adult is able to meet his essential human needs.

(L. 1980 S.B. 576 §7, A.L. 1983 S.B. 44 & 45)

660.285. Director may proceed under other law, when. If the director determines after an investigation that an eligible adult is unable to give consent to receive protective services and presents a likelihood of serious physical harm, the director may initiate proceedings, pursuant to chapter 202, RSMo or chapter 475, RSMo, if appropriate.

(L. 1980 S.B. 576 §8)

660.290. Peace Officer may act, when, how - involuntary treatment may be ordered, how, where rendered - religious beliefs to be observed.

1. When a peace officer has probable cause to believe that an eligible adult will suffer an imminent likelihood of serious physical harm if not immediately placed in a medical facility for care and treatment, that the adult is incapable of giving consent, and that it is not possible to follow the procedures in section 660.285, the officer may transport, or arrange transportation for, the eligible adult to an appropriate medical facility which may admit the eligible adult and shall notify the next of kin, if known, and the director.

Law Enforcement Entry Warrant

2. Where access to the eligible adult is barred and a substantial likelihood exists of serious physical harm resulting to the eligible adult if he is not immediately afforded protective services, the peace officer may apply to the appropriate court for a warrant to enter upon the described premises and remove the eligible adult. The application for the warrant shall identify the eligible adult

and the circumstances and facts which require the issuance of the warrant.

Court Ordered Medical Treatment

3. If immediately upon admission to a medical facility, a person is legally authorized to give consent for the provision of medical treatment for the eligible adult, has not given or refused to give such consent, and it is the opinion of the medical staff of the facility that treatment is necessary to prevent serious physical harm, the director or the head of the medical facility shall file a petition in the appropriate court for an order authorizing specific medical treatment. The court shall hold a hearing and issue its decision forthwith. Notwithstanding the above, if a licensed physician designated by the facility for such purpose examines the eligible adult and determines that the treatment is immediately or imminently necessary and any delay occasioned by the hearing provided in this subsection would jeopardize the life of the person affected, the medical facility may treat the eligible adult prior to such court hearing.

Medical Need for Guardianship

4. The court shall conduct a hearing pursuant to chapter 475, RSMo, forthwith and, if the court finds the eligible adult incapacitated, it shall appoint a guardian ad litem for the person of the eligible adult to determine the nature and extent of the medical treatment necessary for the benefit of the eligible adult and to supervise the rendition of such treatment. The guardian ad litem shall promptly report the completion of treatment to the court, who shall thereupon conduct a restoration hearing or a hearing to appoint a permanent guardian.

5. The medical care under this section may not be rendered in a mental health facility unless authorized pursuant to the civil commitment procedures in chapter 632, RSMo.

6. Nothing contained in this section or in any other section or sections 660.250 to 660.295 shall be construed as requiring physician or medical care or hospitalization of any person who, because of religious faith or conviction, relies on spiritual means or prayer to cure or prevent disease or suffering nor shall any provision of sections 660.250 to 660.295 be construed so as to designate any person as an eligible adult who presents a likelihood of suffering serious physical harm and is in need of protective services solely because such person, because of religious faith or conviction, relies on spiritual means or prayer to cure or prevent disease or suffering.

(L. 1980 S.B. 576 §9, A.L. 1983 S.B. 44 & 45)

Right to Refuse Services

660.295. Discontinuance of services, when -- exception. If an eligible adult does not consent to the receipt of reasonable and necessary protective services, or if an eligible adult withdrew a previously given consent, the protective services shall not be provided or continued; except that, if the director has reasonable cause to believe that the eligible adult lacks the capacity to consent, the director may seek a court order pursuant to the provisions of section 660.285.

(L. 1980 S.B. 576 §10)

In-Home Client Abuse

660.300 Report of abuse or neglect of in-home services client, duty - penalty - contents of report - investigation, procedure - confidentiality of report - immunity - penalty for retaliation - employee disqualification list.

1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he shall immediately report or cause a report to be made to the department. If the report is made by a physician of the in-home services client, the department shall maintain contact with the physician regarding the progress of the investigation.

2. When a report of deteriorating physical condition resulting in possible abuse or neglect of an in-home services client is received by the department, the client's case manager and the department nurse shall be notified. The client's case manager shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize the in-home services provider nurse to assist the case manager with the investigation.

3. If requested, local area agencies on aging shall provide volunteer training to those persons listed in subsection 1 of this section regarding the detection and report of abuse and neglect pursuant to this section.

4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

5. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, the home health agency, the home health agency employee, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

6. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an in-home services client or home health patient has been abused or neglected by an in-home services employee or home health agency employee may report such information to the department.

7. If the investigation indicates possible abuse or neglect of an in-home services client or home health patient, the investigator shall refer the complaint together with his or her report to the department director or his or her designee for appropriate action. If, during the investigation or at its completion the department has reasonable cause to believe that immediate action is necessary to protect the in-home services client or home health patient from abuse or neglect, the department or the local prosecuting attorney, or the attorney general, upon request of the department, shall file a petition for temporary care and protection of the in-home services client or home health patient in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client or home health patient, for a period not to exceed thirty days.

8. Reports shall be confidential, as provided under section 660.320, RSMo.

9. Anyone, except any person who has abused or neglected an in-home services client or home health patient, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

10. Within five working days after a report required to be made under this section is received, the person making

the report shall be notified in writing of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority in an in-home services provider agency or home health agency shall harass, dismiss or retaliate against an in-home services client or home health patient or an in-home services employee or home health agency employee because he or any member of his or her family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or home health agency or any in-home services employee or home health agency employee which he has reasonable cause to believe has been committed or has occurred.

12. Any person who abuses or neglects an in-home services client or home health patient is subject to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo. If such person is an in-home services employee and has been found guilty by a court, and if the supervising in-home services provider willfully and knowingly failed to report known abuse by such employee to the department, the supervising in-home services provider may be subject to administrative penalties of one thousand dollars per violation to be collected by the department and the money received therefore shall be paid to the director of revenue and deposited in the state treasury to the credit of the general revenue fund. Any in-home services provider which has had administrative penalties imposed by the department or which as had its contract terminated may seek an administrative review of the department's action pursuant to chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed to the circuit court in the county where the violation occurred for a trial de novo. For purposes of this subsection, the term "violation" means a determination of guilt by a court.

13. The department shall establish a quality assurance and supervision process for clients that requires an in-home services provider agency to conduct random visits to verify compliance with program standards and verify the accuracy of records kept by an in-home services employee.

14. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client or home health patient while employed by an in-home services provider agency or home health agency. For purposes of this section only, "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A

person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

15. At the time a client has been assessed to determine the level of care as required by rule and is eligible for in-home services, the department shall conduct a "Safe at Home Evaluation" to determine the client's physical, mental, and environmental capacity. The department shall develop the safe at home evaluation tool by rule in accordance with chapter 536, RSMo. The purpose of the safe at home evaluation is to assure that each client has the appropriate level of services and professionals involved in the client's care. The plan of service or care for each in-home services client shall be authorized by a nurse. The department may authorize the licensed in-home services nurse, in lieu of the department nurse, to conduct the assessment of the client's condition and to establish a plan of services or care. The department may use the expertise, services or programs of other departments and agencies on a case-by-case basis to establish the plan of service or care. The department may, as indicated by the safe at home evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030, for evaluation and treatment as necessary.

16. Authorized nurse visits shall occur at least twice annually to assess the client and the client's plan of services. The provider nurse shall report the results of this or her visits to the client's case manager. If the provider nurse believes that the plan of service requires alteration, the department shall be notified and the department shall make a client evaluation. All authorized nurse visits shall be reimbursed to the in-home services provider. All authorized nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients whose services have reached one hundred percent of the average statewide charge for care and treatment in an intermediate care facility, provided that the services have been preauthorized by the department.

17. All in-home services clients shall be advised of their rights by the department at the initial evaluation. The rights shall include, but not be limited to, the right to call the department for any reason, including dissatisfaction with the provider or services. The department shall establish a process to receive such nonabuse and neglect calls other than the elder abuse and neglect hotline.

18. Subject to appropriations, all nurse visits authorized in sections 660.250 to 660.300 shall be reimbursed to the in-home services provider agency.

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311, S.C.S. 2003 S.B. 4)

Misappropriation or Falsification

660.305 In-home services client misappropriation of property, report – investigation - penalty - confidentiality of report – immunity - retaliation prohibited - employee disqualification list.

1. Any person having reasonable cause to believe that a misappropriation of an in-home services client's property or funds, or the falsification of any documents verifying service delivery to the in-home services client has occurred, may report such information to the department.

2. For each report the department shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee who puts to his or her own use or the use of the in-home services provider agency or otherwise diverts from the in-home services client's use any personal property or funds of the in-home services client, or falsifies any documents for service delivery, is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information gained from such investigation to appropriate law enforcement authorities.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of an in-home services client, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320, RSMo.

7. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

9. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the in-home services provider agency or any in-home services employee which he or she has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed by an in-home service provider agency and who have been finally determined by the department to, pursuant to section 660.315, have misappropriated any property or funds, or falsified any documents for service delivery of an in-home services client and who came to be known to the person, directly, or indirectly while employed by an in-home services provider agency.

(L. 1992 S.B. 573 & 634)

Administrative Hearing

660.310 1. Notwithstanding any other provision of law, if the department of health and senior services proposes to deny, suspend, place on probation, or terminate an in-home services provider agency contract, the department of health and senior services shall serve upon the applicant or contractor written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or contractor shall have thirty days from the date of mailing or delivery of the notice to file a complaint requesting a hearing before the administrative hearing commission. The administrative hearing commission may consolidate an applicant's or contractor's complaint with any proceeding before the administrative hearing commission filed by such contractor or applicant pursuant to subsection 3 of section 208.156, RSMo, involving a common question of law or fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.120, 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which the department has denied a contract to an in-home services provider agency, the administrative hearing commission shall conduct a hearing to determine the underlying basis for such denial. However, if the administrative hearing commission finds that the contract denial is supported by the facts and the law, the case need not be returned to the department. The administrative hearing commission's decision shall constitute affirmation of the department's contract denial.

2. The department of health and senior services may issue letters of censure or warning without formal notice or hearing.

3. The administrative hearing commission may stay the suspension or termination of an in-home services provider agency's contract, or the placement of the contractor on probation, pending the commission's findings and determination in the cause, upon such conditions, with or without the agreement of the parties, as the commission deems necessary and appropriate, including the posting of bond or other security except that the commission shall not grant a stay, or if a stay has already been entered shall set aside its stay, unless the commission finds that the contractor has established that servicing the department's clients pending the commission's final determination would not present an imminent danger to the health, safety, or welfare of any client or a substantial probability that death or serious physical harm would result. The commission may remove the stay at any time that it finds that the contractor has violated any of the conditions of the stay. Such stay shall remain in effect, unless earlier removed by the commission, pending the decision of the commission and any subsequent departmental action at which time the stay shall be removed. In any case in which the department has refused to issue a contract, the commission shall have no authority to stay or to require the issuance of a contract pending final determination by the commission.

4. Stays granted to contractors by the administrative hearing commission shall, as a condition of the stay, require at a minimum that the contractor under the stay operate under the same contractual requirements and regulations as are in effect, from time to time, as are applicable to all other contractors in the program.

5. The administrative hearing commission shall make its final decision based upon the circumstances and conditions as they existed at the time of the action of the department and not based upon circumstances and conditions at the time of the hearing or decision of the commission.

6. In any proceeding before the administrative hearing commission pursuant to this section, the burden of proof shall be on the contractor or applicant seeking review.

7. Any person, including the department, aggrieved by a final decision of the administrative hearing commission may seek judicial review of such decision as provided in section 621.145, RSMo.

(L. 2003 S.B. 556 & 311)

Employee Disqualification List

660.315 Employee disqualification list, notification of placement, contents - challenge

of allegation, procedure - hearing, procedure - appeal - removal of name from list - list provided, to whom - prohibition of employment.

1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

(1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, such person may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefore.

5. Any hearing shall be conducted in the county of the person's residence by the director of the department or the director's designee. The provisions of chapter 536, RSMo, for a contested case except those provisions or amendments which are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights and duties of the parties involved. The person appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

6. Upon the record made at the hearing, the director of the department or the director's designee shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification

list. The director of the department or the director's designee shall clearly state the reasons for his or her decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue.

7. A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided under chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final determination that the person shall be placed on the employee disqualification list.

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of health and senior services or one of its divisions.

9. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director of the department of health and senior services or the director's designee, based upon the following:

(1) Whether the person acted recklessly or knowingly, as defined in Chapter 562, RSMo;

(2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

(7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person submitting documentation which fulfills the department of health and senior services' requirements.

10. The removal of any person's name from the list under this section shall not prevent the director from keeping records of all acts finally determined to have occurred under this section.

11. The department shall provide the list maintained pursuant to this section to other state departments upon

request and to any person, corporation or association who:

- (1) Is licensed as an operator under chapter 198, RSMo.
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;
- (4) Is approved by the department to issue certificates for nursing assistants training; or
- (5) Is an entity licensed under chapter 197, RSMo.

The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.

12 No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service who declines to employ or terminate a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13 Any employer who is required to discharge an employee because the employee was placed on a disqualification list maintained by the department of health and senior services after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.

14. Any person who has been listed on the employee disqualification list may request that the director remove his or her name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311)

660.317. Criminal background checks of employees, required when - person with criminal history not to be hired, when, penalty - failure to disclose, penalty – definitions - rules to waive hiring restrictions.

1. For the purposes of this section, the term “**provider**” means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;
- (4) Is an entity licensed pursuant to chapter 197, RSMo;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health; or
- (6) Is a licensed adult day care provider.

2. For the purpose of this section “**patient or resident**” has the same meaning as such term is defined in section 43.540, RSMo.

3. Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

- (1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence. If an applicant has not resided in this state for five consecutive years prior to the date of his or her application for employment, the provider shall request a nationwide check for the purpose of determining if the applicant has a prior criminal history in other states. The fingerprint cards and any required fees shall be sent to the highway patrol's criminal records division. The first set of fingerprints shall be used for searching the state repository of criminal history information. If no identification is made, the second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual. The provisions

Criminal Background Checks

relating to applicants for employment who have not resided in this state for five consecutive years shall apply only to persons who have no employment history with a licensed Missouri facility during that five-year period. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the provider making the record request; and

(2) Make an inquiry to the department of health and senior services whether the person is listed on the employee disqualification list as provided in section 660.315.

4. When the provider requests a criminal background check pursuant to section 43.530, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check. When a provider requests a nationwide criminal background check pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any background check required pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to the availability of appropriations.

5. An applicant for a position to have contact with patients or residents of a provider shall:

(1) Sign a consent form as required by section 43.540, RSMo, so the provider may request a criminal records review;

(2) Disclose the applicant's criminal history. For the purposes of this subdivision "**criminal history**" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315.

6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

7. Any in-home services provider agency or home health agency shall be guilty of a class A misdemeanor if such agency knowingly employs a person to provide in-home services or home health services to any in-home services client or home health patient and such person either

refuses to register with the family care safety registry or is listed on any of the background check lists in the family care safety registry pursuant to sections 210.900 to 210.937, RSMo.

8. The highway patrol shall examine whether protocols can be developed to allow a provider to request a state wide fingerprint criminal records review check through local law enforcement agencies.

9. A provider may use a private investigatory agency rather than the highway patrol to do a criminal history records review check, and alternatively, the applicant pays the private investigatory agency such fees as the provider and such agency shall agree.

10. Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section 660.315, the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "**good cause**" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.

(L. 1996 H.B. 1362, A.L. 1997 S.B. 358, A.L. 1998 H.B. 1046 & H.B. 1907, A.L. 2003 S.B. 556 & 311, S.C.S. 2003 S.B. 4)

660.320 Prohibition against disclosure of reports, exceptions.

1. Reports confidential under sections 198.070, RSMo, and sections 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his or her name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the division of family services for the purpose of licensure under chapter 210., RSMo.

2. The department shall, upon request, provide to the division of employment security within the department of labor and industrial relations copies of the investigative reports that led to an employee being placed on the disqualification list.

660.321 Prohibition against disclosure of personally identifiable information, exceptions – records accessible without court order, when.

Notwithstanding any other provision of law, the department shall not disclose personally identifiable medical, social, personal, or financial records of any eligible adult being served by the division of senior services except when disclosed in a manner that does not identify the eligible adult, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department for such purposes as the department may determine;
- (2) The attorney general, to perform his or her constitutional or statutory duties;
- (3) The department of mental health for residents placed through that department, to perform its constitutional or statutory duties;
- (4) Any appropriate law enforcement agency, to perform its constitutional or statutory duties;
- (5) The eligible adult, his or her legal guardian or any other person designated by the eligible adult; and
- (6) The department of social services for individuals who receive Medicaid benefits, to perform its constitutional or statutory duties.

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311)

**CHAPTER 565, RSMo
OFFENSES AGAINST THE PERSON**

partially reprinted to include
CHAPTER 565.180-565.190 RSMo & 570.145 RSMo
"Crime of Elder Abuse"

565.002. Definitions.

(6) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

565.180. Elder abuse in the first degree - penalty.

1. A person commits the crime of elder abuse in the first degree if he attempts to kill, knowingly causes or attempts to cause serious physical injury, as defined in section 565.002, RSMo, to any person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo.

2. Elder abuse in the first degree is a class A felony.
(L. 1992 S.B. 573 & 634 §1)

565.182. Elder Abuse in the second degree - penalty.

1. A person commits the crime of elder abuse in the second degree if he:

- (1) Knowingly causes, attempts to cause physical injury to any person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo, by means of deadly weapon or dangerous instrument; or
- (2) Recklessly and purposely causes serious physical injury as defined in section 565.002, RSMo, to a person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo.

2. Elder abuse in the second degree is a class B felony.
(L. 1992 S.B. 573 & 634 §2)

565.184. Elder abuse in the third degree - penalty.

1. A person commits the crime of elder abuse in the third degree if he:

- (1) Knowingly causes or attempts to cause physical contact with any person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo, knowing the other person will regard the contact as harmful or provocative; or
- (2) Purposely engages in conduct involving more than one incident that causes grave emotional distress to a person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo. The course of conduct shall be such as would cause a reasonable person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo, to suffer substantial emotional distress; or

(3) Purposely or knowingly places a person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo, in apprehension of immediate physical injury; or

(4) Intentionally fails to provide care, goods or services to a person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo. The cause of the conduct shall be such as would cause a reasonable person age sixty or older or an eligible adult as defined in section 660.250, RSMo, to suffer physical or emotional distress; or

(5) Knowingly acts or knowingly fails to act in a manner which results in a grave risk to the life, body or health of a person sixty years of age or older or an eligible adult as defined in section 660.250, RSMo.

2. Elder abuse in the third degree is a class A misdemeanor.

(L. 1992 S.B. 573 & 634 §3)

565.186. Investigation of elder abuse - report.

The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly report the incident to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo. If the department is unable to substantiate whether abuse occurred due to the failure of the operator or any of the operator's agents or employees to cooperate with the investigation, the incident shall be promptly reported to appropriate law enforcement agencies.

(L. 1992 S.B. 573 & 634 §4, A.L. 2003 S.B. 556 & 311)

565.188. Report of elder abuse, penalty - false report, penalty - evidence of prior convictions.

1. When any adult day care worker; chiropractor; Christian Science practitioner, coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with responsibility for the care of a person sixty years of age or older has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances which would reasonably result in abuse or neglect, he or she shall immediately report or cause a report to be made to the department in accordance with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

2. Any person who knowingly fails to make a report as required in subsection 1 of this section is guilty of a class A misdemeanor.

3. Any person who purposely files a false report of elder abuse or neglect is guilty of a class A misdemeanor.

4. Every person who has been previously convicted of or pled guilty to making a false report to the department and who is subsequently convicted of making a false report under subsection 3 of this section is guilty of a class D felony.

5. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

(L. 1992 S.B. 573 & 634 §5, A.L. 2003 S.B. 556 & 311)

565.190. Duty to report, immunity. Any person, official or institution complying with the provisions of section 565.188 in the making of a report, or in cooperating with the department in any of its activities pursuant to sections 565.186 and 565.188, except any person, official or institution violating sections 565.180, 565.182 or 565.184, shall be immune from any civil or criminal liability for making such a report, or in cooperating with the department, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

(L. 1992 S.B. 573 & 634 §6)

570.145. Financial exploitation of the elderly and disabled, penalty - definitions.

1. A person commits the crime of financial exploitation of an elderly or disabled person if such person knowingly and by deception, intimidation, or force obtains control over the elderly or disabled person's property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby benefiting such person or detrimentally affecting the elderly or disabled person. Financial exploitation of an elderly or disabled person is a class A misdemeanor if the value of the property is less than fifty dollars, a class D felony if the value of the property is fifty dollars but less than five hundred dollars, a class C felony if the value of the property is five hundred dollars but less than one thousand dollars, and a class B felony if the value of the property is one thousand dollars or more.

2. For purposes of this section, the following terms mean:

(1) "Deception", a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly or disabled person or to the existing or preexisting condition of any of the property involved in such contract or agreement, or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage

or solicit the elderly or disabled person to enter into a contract or agreement. Deception includes:

(a) Creating or confirming another person's impression which is false and which the offender does not believe to be true; or

(b) Failure to correct a false impression which the offender previously has created or confirmed; or

(c) Preventing another person from acquiring information pertinent to the disposition of the property involved; or

(d) Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promising performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not sufficient evidence to prove that the offender did not intend to perform;

(2) "Disabled person", a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of avoiding or preventing the commission of an offense;

(3) "Elderly person", a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense;

(4) "Intimidation", the communication to an elderly or disabled person that he or she will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

3. Nothing in this section shall be construed to limit the remedies available to the victim pursuant to any state law relating to domestic violence.

4. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly or disabled person in the management of his or her property, but through no fault of his or her own has been unable to provide such assistance.

5. Nothing in this section shall limit the ability to engage in bona fide estate planning, to transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that such actions do not adversely impact the standard of living to which the elderly or disabled person has become accustomed at the time of such actions.

6. It shall not be a defense to financial exploitation of an elderly or disabled person that the accused reasonably believed that the victim was not an elderly or disabled person.

(L. 2000 H.B. 1386 & 1086, A.L. 2003 S.B. 556 & 311)

CHAPTER 198, RSMo CONVALESCENT, NURSING, AND BOARDING HOMES

partially reprinted to include
CHAPTER 198.006, 198.015, 198.022, 198.032, 198.070
198.088, and 198.090 RSMo

"Omnibus Nursing Home Act"

198.006. Definitions. - As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

(1) "**Abuse**", the infliction of physical, sexual, or emotional injury or harm;

(2) "**Administrator**", the person who is in general administrative charge of a facility;

(3) "**Affiliate**";

(a) With respect to a partnership, each partner thereof;

(b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

(c) With respect to a corporation, each person who owns, holds or has the power to vote, five percent or more of any class of securities issued by the corporation, and each officer and director;

(d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

(4) "**Department**", the Missouri department of health and senior services;

(5) "**Emergency**", a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of a facility;

(6) "**Facility**", any residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility;

(7) "**Health care provider**", any person providing health care services or goods to residents and who receives funds in payment for such goods or services under Medicaid;

(8) "**Intermediate care facility**", any premises, other than a residential care facility I, residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;

(9) **“Manager”**, any person other than the administrator of a facility who contracts or otherwise agrees with an owner or operator to supervise the general operation of a facility, providing such services as hiring and training personnel, purchasing supplies, keeping financial records, and making reports;

(10) **“Medicaid”**, medical assistance under section 208.151, RSMo, et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42 USC 301 et seq.), as amended;

(11) **“Neglect”**, the failure to provide, by those responsible for the care, custody, and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health, safety or welfare of the resident or a substantial probability that death or serious physical harm would result;

(12) **“Operator”**, any person licensed or required to be licensed under the provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

(13) **“Owner”**, any person who owns an interest of five percent or more in:

(a) The land on which any facility is located;

(b) The structure or structures in which any facility is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or

(d) Any lease or sublease of the land or structure in or on which a facility is located. “Owner” does not include a holder of a debenture or bond purchased at public issue nor does it include any regulated lender unless the entity or person directly or through a subsidiary operates a facility;

(14) **“Resident”**, a person who by reason of aging, illness, disease, or physical or mental infirmity receives or requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

(15) **“Residential care facility I”**, any premises, other than a residential care facility II, intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour care to three or more residents, who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility and who need or are provided with shelter, board, and with protective oversight, which may include storage and distribution or administration of medications and care during short-term illness or recuperation;

(16) **“Residential care facility II”**, any premises, other than a residential care facility I, an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board and care to three or more residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility, and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician, and protective oversight, including care during short-term illness or recuperation;

(17) **“Skilled nursing facility”**, any premises, other than a residential care facility I, a residential care facility II, or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill;

(18) **“Vendor”**, any person selling goods or services to a health care provider.

(L. 1979 S.B. 328, et al. §4, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277)
Effective 6-19-87

198.015. License, when required - duration - content - effect of change of ownership - temporary permits - penalty for violation. --

1. No person shall establish, conduct or maintain a residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility in this state without a valid license issued by the department. Any person violating this subsection is guilty of a class A misdemeanor. Any person violating this subsection wherein abuse and neglect of a resident of the facility has occurred is guilty of a class D felony. The department of health and senior services shall investigate any complaint concerning operating unlicensed facilities. For complaints alleging abuse or neglect, the department shall initiate an investigation within twenty-four hours. All other complaints regarding unlicensed facilities shall be investigated within forty-five days.

2. If the department determines the unlicensed facility is in violation of sections 198.006 to 198.186, the

department shall immediately notify the local prosecuting attorney or attorney general's office.

3. Each license shall be issued only for the premises and persons named in the application. A license, unless sooner revoked, shall be issued for a period of up to two years, in order to coordinate licensure with certification in accordance with section 198.045.

4. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, the current operator shall notify the department of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

(1) With respect to a partnership, a change in the majority interest of general partners;

(2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;

(3) With respect to a corporation, a change in the persons who own, hold or have the power to vote the majority of any class of securities issued by the corporation.

Licenses Shall Be Posted on the Premises

5. Licenses shall be posted in a conspicuous place on the licensed premises.

6. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.

7. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.

8. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.

9. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

(L. 1979 S.B. 328, et. al. §6, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381)
CROSS REFERENCES:

License for administrator of residential care facilities II required, limitations, RSMo 344.020.

Skilled nursing care facilities, a license for residential care facilities II insufficient, RSMo 344.020.

198.022. Duty of department on receipt of application - duty upon denial – department may copy records at its expense - inspection, when - court order to inspect.

1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

(1) The statements in the application are true and correct;

(2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;

(3) The applicant has the financial capacity to operate the facility;

(4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 334, RSMo;

(5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory;

(6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;

(7) All fees due to the state have been paid.

2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.

The Department Shall Make at Least Two Inspections per Year

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated there under at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. Copies of any records requested by the department shall be prepared by the staff of such facility within two business days or as determined by the department. The department shall not remove or disassemble any medical record during any inspection of the facility, but may observe the photocopying or may make its own copies if the facility does not have the technology to make copies. In accordance with the provisions of section 198.525. The department shall make at least two inspections per year, at least one of which shall be unannounced to the operator. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.

4. Whenever the department has reasonable grounds to believe that a facility required to be licensed under sections 198.003 to 198.096 is operating without a license, and the department is not permitted access to inspect the facility, or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

5. Whenever the department is inspecting a facility in response to an application from an operator located outside of Missouri not previously licensed by the department, the department may request from the applicant the past five years compliance history of all facilities owned by the applicant outside of this state.

(L. 1979 S.B. 328, et. al. §8, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381)

On-site revisit not required, when.

198.027. If a facility submits satisfactory documentation that establishes correction of any deficiency contained within the written report of deficiency required by section 198.026, an on-site revisit of such deficiency may not be required.

(L. 2003 S.B. 556 & 311)

Posting of inspection reports at the facility.

198.030. Every residential care facility I, residential care facility II, intermediate care facility, and skilled nursing facility shall post the most recent inspection report of the facility in a conspicuous place. If the operator determines that the inspection report of the facility contains individually identifiable health information, the operator may redact such information prior to posting the inspection report.

(L. 2003 S.B. 556 & 311)

Confidentiality of Abuse / Neglect Reports

198.032 Records, what confidential, what subject to disclosure - procedure – central registry to receive complaints of abuse and neglect, procedure.

1. Nothing contained in sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department;
- (2) The attorney general;
- (3) The department of mental health for residents placed through that department;
- (4) Any appropriate law enforcement agency;
- (5) The resident, the resident's guardian, or any other person designated by the resident; and
- (6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with section 198.070, and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record and maintain a hotline caller log for the reporting of suspected abuse and neglect in long-term care facilities. Any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording. The department shall in all cases attempt to obtain the name of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The department shall also attempt to obtain the address of any person making a report. The identity of the person making the report shall remain confidential

4. Although reports to the central registry may be made anonymously, the department shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect, attempt to obtain the name and address of any person making a report.

(L. 1979 S.B. 328, et al. §11, A.L. 1987 S.B. 277)

Mandated Reporters

198.070. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

2. The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to the penalties imposed by this section, any administrator who knowingly conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in section 565.002, RSMo, is guilty of a class D felony.

5. In addition to those persons required to report pursuant to subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or neglected may report such information to the department.

6. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and as soon as possible during the course of the investigation shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated unless the person is the alleged perpetrator of the abuse or neglect. As provided in section 565.186 RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.

7. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident for a period not to exceed thirty days.

8. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

9. Anyone, except any person who has abuses and neglected a resident in a facility, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith or with malicious purpose. It is a crime pursuant to section 565.186, RSMo, and 565.188

RSMo, for any person to purposely file a false report of elder abuse or neglect.

10. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing Division of Aging information and referral contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

12. Any person who abuses or neglects a resident of a facility is subject to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo.

Employee Disqualification List

13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed in any facility and who have been finally determined by the department pursuant to section 660.315, RSMo, to have knowingly or recklessly abused or neglected a resident. For purposes of this section only, "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

14. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hotline call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

(L. 1979 S.B. 328, et. al. §23, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1990 H.B. 1370, et. al., A.L. 1992 S.B. 573 & 634, A.L. 1994 H.B. 1335 & 1381, A.L. 1999 HB 316, 660 & 203, A.L. 2003 S.B. 556 & 311)

(1989) Owners and operators of nursing home were convicted of knowing neglect where they have knowledge of neglect in administration of required care; but persons may not be convicted of knowing neglect simply because of ownership or supervisory authority over a facility. (Mo. Banc 1989) State v. Dale, 775 S.W. 2d 126.

(1989) Statute making it a Class D felony to knowingly abuse or neglect resident of nursing care facility held not unconstitutionally vague. Owners or managers responsible for known abuse or neglect. (Mo. banc 1989) State v. Dale 775 S.W. 2d 126.

198.088. Facilities to establish policies and procedures, scope, content - rights of residents – complaint - procedure.

1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representatives and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(c) Except in the case of an emergency, the resident, his next of kin, attending physician, and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources;

Policies Must Define the Uses of Chemical and Physical Restraints

(3) Policies define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and

describe the mechanism for monitoring and controlling their use;

(4) Policies define procedures for submittal of complaints and recommendations by residents and for assuring response and disposition;

(5) There are written policies governing access to, duplication of, and dissemination of information from the resident's records;

(6) Each resident admitted to the facility:

(a) Is fully informed of his rights and responsibilities as a resident. Prior to or at the time of admission, a list of resident rights shall be provided to each resident, or his designee, next of kin, or legal guardian. A list of resident rights shall be posted in a conspicuous location in the facility and copies shall be available to anyone upon request;

(b) Is fully informed in writing, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under the federal or state programs or not covered by the facility's basic per diem rate;

Residents Must be Fully Informed of Their Medical Condition

(c) Is fully informed by a physician of his health and medical condition unless medically contraindicated, as documented by a physician in his resident record, and is afforded the opportunity to participate in the planning of his total care and medical treatment and to refuse treatment, and participates in experimental research only upon his informed written consent;

(d) Is transferred or discharged only for medical reasons or for his welfare or that of other residents, or for nonpayment for his stay. No resident may be discharged without notice of his right to a hearing and an opportunity to be heard on the issue of whether his immediate discharge is necessary. Such notice shall be given in writing no less than thirty days in advance of the discharge except in the case of an emergency discharge. In emergency discharges a written notice of discharge and right to a hearing shall be given as soon as practicable and an expedited hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

Residents are Encouraged to Exercise Their Rights

(e) Is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen,

and to this end may voice grievances and recommend changes in policies and services to facility staff or the outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) May manage his personal financial affairs, and, to the extent that the facility assists in such management, has his personal financial affairs managed in accordance with section 198.090;

(g) Is free from mental and physical abuse, and free from chemical and physical restraints except as follows:

i. When used as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psycho social well-being;

ii. When authorized in writing by a physician for a specified period of time; and

iii. When necessary in an emergency to protect the resident from injury to himself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician.

When restraints are indicated, devices that are least restrictive, consistent with the resident's total treatment program, shall be used;

Residents Must be Ensured of Confidential Treatment

(h) Is ensured confidential treatment of all information contained in his records, including information contained in an automatic data bank, and his written consent shall be required for the release of information to persons not otherwise authorized under law to receive it;

(i) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

(j) Is not required to perform services for the facility;

(k) May communicate, associate and meet privately with persons of his choice, unless to do so would infringe upon the rights of other residents, and send and receive his personal mail unopened;

(l) May participate in activities of social, religious and community groups at his discretion, unless contraindicated for reasons documented by a physician in the resident's medical record;

(m) May retain and use his personal clothing and possessions as space permits;

(n) If married, is ensured privacy for visits by his or her spouse; if both are residents in the facility, they are permitted to share a room; and

(o) Is allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of his own choice;

(7) The resident or his designee, next of kin or legal guardian receives an itemized bill for all goods and services actually rendered;

(8) A written account, available to residents and their families, is maintained on a current basis for each resident with written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident.

2. Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision. Each resident shall be given a copy of a statement of his rights and responsibilities, including a copy of the facility's rules and regulations. Each facility shall prepare a written plan to ensure the respect of each resident's rights and privacy and shall provide appropriate staff training to implement the plan.

Grievances and Complaints

3. (1) Each facility shall establish written procedures approved by the department by which complaints and grievances of residents may be heard and considered. The procedures shall provide for referral to the department of any complaints or grievances not resolved by the facility's grievance procedure.

(2) Each facility shall designate one staff member, employed full time, referred to in this subsection as the "designee", to receive all grievances when they are first made.

(3) If anyone wishes to complain about treatment, conditions, or violations of rights, he shall write or cause to be written his grievance or shall state it orally to the designee no later than fourteen days after the occurrence giving rise to the grievance. When the department receives a complaint that does not contain allegations of abuse or neglect or allegations which would, if substantiated, constitute violation of a class I or class II standard as defined in section 198.085, and the complainant indicates that the complaint was not filed with the facility prior to the reporting of it to the department, the department may in such instances refer the complaint to the staff person who is designated by the facility to receive all grievances when they are first made. In such instances the department shall assure appropriate response from the facility, assure resolution at a subsequent on-site visit and provide a report to the complainant. The designee shall confer with persons involved in the occurrence and with any other witnesses

and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) The department shall establish and implement procedures for the making and transmission of complaints to the department by any person alleging violation of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the standards established thereunder. The department shall promptly review each complaint. In the case of a refusal to investigate, the department shall promptly notify the complainant of its refusal and the reasons therefor; and in every other case, the department shall, following investigation, notify the complainant of its investigation and any proposed action.

4. Whenever the department finds upon investigation there have been violations of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, RSMo, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090.

(L. 1979 S.B. 328, et al. §29, A.L. 1988 S.B. 602, A.L. 1989 S.B. 203 & 270, A.L. 1994 H.B. 1335 & 1381)

Personal Possessions and Funds of Residents

198.090. Personal possessions may be held in trust, requirements, disposal of - written statements required when, penalty - prohibitions, penalties - misappropriation, report, investigation - employee disqualification list. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's

personal needs. In providing this service the operator shall:

- (1) At the time of admission, provide each resident or his next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;
- (2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by his designee, or guardian in the case of an adjudged incompetent;
- (3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the division of aging may be kept in a petty cash fund for the resident's personal needs;
- (4) Keep a written account, available to a resident and his designee or guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

Provide Residents with Quarterly Accounting

- (5) Provide each resident or his designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;
- (6) Within five days of the discharge of a resident, provide the resident, or his designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of his funds and all his personal possessions;
- (7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on his behalf by the department of social services, provide the department a complete account of all the resident's personal funds within sixty days from the date of death. The total amount paid to the decedent or expended upon his behalf by the department shall be a debt due the state and recovered from the available funds upon the department's claim on such funds. The department shall make a claim on the funds within sixty days from the date of the accounting of the funds by the facility. The nursing facility shall pay the claim made by the department of social services from the resident's personal funds within sixty days. Where the name and address are reasonably ascertainable, the department of social services shall give notice of the debt due the state to the person whom the recipient had designated to receive the quarterly accounting of all financial transactions made under this section, or the resident's guardian or conservator or the person or persons listed in nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds

are available after the department's claim, the remaining provisions of this section shall apply to the balance, unless the funds belonged to a person other than the resident, in which case the funds shall be paid to that person;

- (8) Upon the death of a resident who has not been a recipient of aid, assistance, care, service, or who has not had moneys expended on his behalf by the department of social services or the department has not made a claim on the funds, provide the fiduciary of resident's estate, at the fiduciary's request, a complete account of all the resident's personal funds and possessions and deliver to the fiduciary all possessions of the resident and the balance of the resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such funds or possessions, the operator shall notify the department that the funds remain unclaimed. Such unclaimed funds or possessions shall be disposed of as follows:

- (a) If the unclaimed funds or possessions have a value totaling one hundred and fifty dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund to be used for the benefit of all residents of the facility by providing the residents social or educational activities. The facility shall keep an accounting of the acquisitions and expenditure of these funds; or

- (b) If the unclaimed funds or possessions have a value greater than one hundred and fifty dollars, the funds or possessions shall be immediately presumed to be abandoned property under sections 447.500 to 447.585, RSMo, and the procedures provided for in those sections shall apply notwithstanding any other provisions of those sections which require a period greater than two years for a presumption of abandonment;

- (9) Upon ceasing to be the operator of a facility, all funds and property held in trust pursuant to this section shall be transferred to the new operator in accordance with sound accounting principles, and a closeout report signed by both the outgoing operator and the successor operator shall be prepared. The closeout report shall include a list of current balances of all funds held for residents respectively and an inventory of all property held for residents respectively. If the outgoing operator refuses to sign the closeout report he shall state in writing the specific reasons for his failure to so sign, and the successor operator shall complete the report and attach an affidavit stating that the information contained therein is true to the best of his knowledge and belief. Such report shall be retained with all other records and accounts required to be maintained under this section;

- (10) Not be required to invest any funds received from or on behalf of a resident, nor to increase the principal of any such funds.

2. Any owner, operator, manager, employee, or affiliate of an owner or operator who receives any personal property or anything else of value from a resident, shall, if the thing received has a value of ten dollars or more, make a written statement giving the date it was received, from whom it was received, and its estimated value. Statements required to be made pursuant to this subsection shall be retained by the operator and shall be made available for inspection by the department, or by the department of mental health when the resident has been placed by that department, and by the resident, and his designee or legal guardian. Any person who fails to make a statement required by this subsection is guilty of a class C misdemeanor.

3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in one calendar year receive any personal property or anything else of value from the residents of any facility which have a total estimated value in excess of one hundred dollars.

4. Subsections 2 and 3 of this section shall not apply if the property or other thing of value is held in trust in accordance with subsection 1 of this section, is received in payment for services rendered or pursuant to the terms of a lawful contract, or is received from a resident who is related to the recipient within the fourth degree of consanguinity or affinity.

5. Any operator who fails to maintain records or who fails to maintain any resident's personal funds in an account separate from the facility's funds as required by this section shall be guilty of a class C misdemeanor.

6. Any operator, or any affiliate or employee of an operator, who puts to his own use or the use of the facility or otherwise diverts from the resident's use any personal funds of the resident shall be guilty of a class A misdemeanor.

Misappropriation of Funds

7. Any person having reasonable cause to believe that a misappropriation of a resident's funds or property has occurred may report such information to the department.

8. For each report the division shall attempt to obtain the name and address of the facility, the name of the facility employee, the name of the resident, information regarding the nature of the misappropriation, the name of the complainant, and any other information which might be helpful in an investigation.

9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicated probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action.

11. Reports shall be confidential, as provided under section 660.320, RSMo.

12. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, RSMo, to have misappropriated any property or funds of a resident while employed in any facility.

(L. 1979 S.B. 328, et al. §30, A.L. 1982 H.B. 1086, A.L. 1989 S.B. 203 & 270, A.L. 1992 S.B. 573 & 634, A.L. 1993 H.B. 564)